CRP 514/2006
BEFORE
THE HON'BLE MR JUSTICE H.N. SARMA

1. Heard Mr. A. D. Choudhury, learned counsel for the petitioner/appellant as well as Mr A.R. Sikdar, learned counsel for the Opposite Party/Defendant.

2. This revision petition is directed against the order dated 14.9.2006 passed by the learned District Judge, Barpeta in Title Appeal No. 7/2006, wherein and whereunder the learned District Judge, Barpeta had rejected the application U/section 5 of the Limitation Act, 1963 for condoning the delay of 86 days in filing the said appeal i.e T.A. No. 7/2006 against the judgment and decree dated 31.3.2006 on the inter alia ground that for the period from 19.6.06 to 1.7.06 there was no proper explanation and also for the period from 20.7.06 to 26.7.06.

3. It is fairly well settled law that sufficient cause mentioned in Section 5 of the Limitation Act, 1963 should be liberally construed.

4. Mr. A.D. Choudhury, learned counsel for the Petitoner/Appellant had made a heavy reliance on the decisions of the Apex Court in Collector, Land Acquisition , Anantnag and another Vs. Mst. Katiji and others, reported in 1987 (2) SCC 107 and the decision of this Court in Joy Mohan Mallik & Ors Vs Union of India & Anr, reported in 2001 (1) GLT 544 in support of his case.

5. It is fairly well settled principle of law that while considering condonation of delay, number of days' delay is not deciding factor for deciding the application for condonation of delay, but the deciding factor is as to whether or not the good and sufficient reasons have been given for the delay. As stated above, the Apex Court in a Catena of cases held that the words ' sufficient cause' mentioned in Section 5 of the Limitation Act shall be liberally construed.

6. The Apex court also in a number of cases held that it is not required to explain the day to day delay. To the contrary, the learned counsel appearing for the respondents had referred to the decision of this Court in Union of India & Ors Vs Wood Crafts Products Ltd and Anr. , reported in 2001 (1)GLT 34.

7. From perusal of the decisions of this Court in Union of India & Ors Vs Wood Crafts Products Ltd and Anr (supra) , it appears that this court had rejected the application for condonation of delay in that case only on the sole ground that there is absolutely no reason for condoning the delay, in asmuch, as the petitioner did not give reason or explanation for the period of delay.

8. Coming back in the present case, the petitioner/appellant also annexed the copy of the application for condonation of delay filed before the learned District Judge, Barpeta as (Annexure 5 to the present revision petition . In Para 3 of the condonation petition, it is clearly mentioned that the petitioner/appellant No.1 was suffering from Jaundice from 29.3.2006 to 9.5.2006 . After recovery from Jaundice the appellant No.1 applied for certified copy of the Judgment and decree but unfortunately he again fell ill from the period from 1.7.2006 to 20.7.2006 It is stated in Para-4 of the said application for condonation of delay that the appeal has been preferred on 26.7.2006 after the expiry of the prescribed period of limitation.

9. From the perusal of the application for condonation of delay, there are explanations for the delay for the period from 1.7.06 to 20.7.06 and also for the period from 29.3.2006 to 9.5.2006, inasmuch as, during that period the petitioner/appellant No.1 was suffering from Jaundice and certain illness. But the learned District Judge, Barpeta, while passing the impugned order dated 14.9.06 held that for the period from 19.6.06 to 1.7.06 and for the period fro

m 21.7.06 to 26.7.06 there was no explanation. In other words, the learned District Judge, Barpeta had not liberally construed the words ' sufficient cause' mentioned in Section 5 of the Limitation Act while rejecting the application for condonation of delay.

10. The learned counsel for the petitioner/appellant in order to substantiate the case of the petitioner/appellant had referred to the decisions of the Apex Court in State of Nagaland Vs Lipol AO and others, reported in AIR 2005 SC 2191, wherein the Apex Court held that sufficient cause should be considered with pragmatism in justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. Para-11 of the AIR in State of Nagaland Vs Lipol AO and others (supra) reads as follows:

Para 11. What constitutes sufficient cause cannot be laid down by hard and fast rules. In New India Insurance Co. Ltd Vs Shanti Misra (1975 (2) SCC 840) this court held that discretion given by Section 5 should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law. The expression sufficient cause should receive a liberal construction. In Brij Indar Singh Vs Kanshi Ram (ILR (1918) 45 Cal 94 (PC) it was observed that true guide for a court to exercise the discretion under section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In Shakuntala Devi Jain Vs Kuntal Kumari (AIR 1969 SC 575) a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned .

11. Keeping in view of the decisions of the Apex Court as well as the decisions of this Court in the cases discussed above and also perusal of the application for condonation of delay of 86 days, this court is of the considered view, that sufficient cause have been shown for condoning the delay. Accordingly, 86 days' delay in filing the Title Appeal No. 7/2006 in the court of the learned District Judge, Barpeta is condoned and the learned District Judge, Barpeta shall take up the Title Appeal No. 7/2006 for admission according to law.

12. The revision petition is allowed.